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ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document consists of a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan for a unit on abortion. The lessons are designed to expose students to the Supreme Court's decision concerning abortion in "Roe versus Wade" and to discuss briefly issues of spousal and parental consent addressed in the subsequent case of "Planned Parenthood of Missouri versus Danforth." Although similar in content, student and teacher lesson plans are presented separately to facilitate independent or small group work by students and to provide background information for teachers. Activities and discussion during a lawyer's visit to the classroom center on hypothetical case studies and actual court cases dealing with abortion issues. Students examine the rights of parties involved in abortion as well as the rights of the government. The teacher's lesson plan includes a glossary, information on court systems, and a simplified view of federal and California court structures. The lawyer's lesson plan provides further discussion of cases, including thought-provoking questions and questions concerning resolution of dispute and other court decisions and issues dealing with abortion. (LH)

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DESIGN FOR LIFE

Abortion

A Student's Lesson Plan

Prepared by Estella Howard
Richard Weintraub
1977

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STUDENT'S LESSON PLAN

INTRODUCTORY UNIT

Read the following hypothetical cases. Using the information you gained from the lawyer's visit, consider carefully the issues raised by these cases and discuss the questions with the class.

CASE 1

Sally and Bill Jones, a married couple in their early twenties, discover, much to Bill's elation and Sally's distress, that they are going to be parents. Sally is approximately nine weeks pregnant and in good physical health. She has spent the first years of their marriage working at a job that was the best she could get, but only barely satisfactory in terms of financial and psychological rewards, in order to put Bill through school. He has one more year to go. Their meager savings were in turn to help Sally through school, a goal she has long and eagerly anticipated. The financial burden and time commitment of child raising will eliminate school for Sally. She decides she wants an abortion. Bill, because he has a strong religious belief that life should be preserved at all costs, decides he wants a child. The law in the state where Bill and Sally live requires that written consent of the spouse be given in order for a woman to have an abortion during the first twelve weeks of pregnancy. Bill refuses to give his consent.

QUESTIONS

A. Should Bill be able to prevent the abortion?

B. If you were Bill, what arguments would you make to support your case?

C. What rights does Sally have in this matter? What arguments would you make if you were Sally?

CASE 2

Susie is 16 years old, unmarried and living with her parents. She discovers that she is about eight weeks pregnant. Her parents' dislike for the father of the child is far surpassed by their belief that abortion is murder. Susie does not want to marry, and does not want to be an unwed mother. She knows it is medically best to have an abortion during the first 3 months of pregnancy. She wants an abortion and she wants it now. However, the law in her State requires that an unmarried woman under 18 years of age must have the consent of a parent in order to have an abortion during the first 12 weeks of pregnancy. Yet, she knows that neither parent would ever consent.

QUESTIONS

A. What interest do Susie's parents have in the abortion decision? Should they be able to prevent her from having an abortion?

B. Should Susie be able to obtain an abortion without the requirements that her parents consent to the abortion? Why? Why not?

LAWYER-IN-THE-CLASSROOM UNIT

Read the case the lawyer will analyze and discuss the facts with the class. Study the questions listed below so that you can enter into discussion with the lawyer, ask questions about facts and procedure, and express your opinion on the issues raised by the case.

CASE

Jane Roe, an unmarried woman 20 years of age, was informed by her doctor that she was approximately 8 weeks pregnant. She decided that she did not want to have a child and sought an abortion. Aware of the risks to her health and life in an illegal abortion, Jane wanted to have the abortion performed by her doctor, who was a licensed physician and surgeon, and in a hospital. However, her doctor refused to perform the operation. The laws in Jane's state provided that an abortion was a criminal offense unless it was performed to save the mother's life and that her doctor would be subject to jail if he disobeyed the law. As her doctor explained, Jane was a perfectly healthy female and her pregnancy presented no threat to her life. In fact, her doctor added, the present state of medical and surgical science was such that an abortion in the early stages of pregnancy, as in Jane's case, presented less of a risk to her physical health than normal childbirth. Still, given the state law, nothing could be done. Because she could not afford the expense of obtaining an abortion in another state, Jane was faced with the burdens of pregnancy, childbirth, raising a child she did not want, and the social stigma arising from being an unwed mother.

QUESTIONS

A. Does a woman have a constitutional right to an abortion? If so, is it absolute? Or can the state make it a crime?

B. Who has an interest in whether an abortion is allowed? The pregnant woman? The state? Anyone else? Which of these interested parties needs are or should be protected by the law? Why?

C. If you were Jane (or any other pregnant woman) what arguments would you make to support your absolute right to an abortion?

D. What arguments can be made for the state having the right to regulate and forbid abortion?

E. How would you feel if you were Jane? Father of her child?

F. If you were the court, how would you decide the case? Why?

G. If you were of a religion that forbade abortion, do you think that should be a reason for the government to make laws against abortion? Why? Why not?

FOLLOW-UP UNIT

You have discussed the decision of the Supreme Court concerning a woman's right to abortion, and issues such as the rights of a husband in such cases and the rights of a minor, unwed woman. Now, using the information you have gained, and the reasons the Court has given for its decisions, project yourself into the future and consider the issues raised by the hypothetical case presented.

CASE

It is the year 2020. The United States has been successful in its campaign of the past 25 years to attain zero population growth. This policy had been set in the 1990's when it was recognized that the country would be faced with a major crisis if the population continued to increase at the rate it had since the turn of the 20th century.

Envisioning critical food shortages, vast unemployment, inadequate housing as well as intolerable pressures on resources such as water, electricity, oil, etc. The government had passed laws restricting child bearing and requiring that couples wishing to have a child had to obtain a license to comply with the law. If the woman becomes pregnant without the government's approval, the government can order her to have an abortion.

Caroline and Frank Robbins have been married 10 years. They have no children. They decide they want a child. They complete the necessary papers and file their application. It is refused. Caroline and Frank decide to have a child secretly and fight the law if they are arrested.

QUESTIONS

A. What are the major issues in this case? Should the government have the right, under any conditions, to make laws restricting people from having children? Why? Why not?

B. If the country faces a crisis such as outlined in this situation, should the government have the right to interfere with the freedom of the individual because of the needs of the whole society? Why? Why not? Do you think your attitude would be the same if you were married and wanted a child? If you had six children and had difficulty supporting them? If you were the President of the United States responsible for the well-being of the entire country?

C. If you were Caroline and Frank would you challenge a law prohibiting you from having children without a license? Why? Why not?

D. What arguments would you use if you were a lawyer defending the Robbins in this case? the prosecuting attorney?

E. How do you think a Supreme Court might decide such a case? What are your reasons?

F. If you were the court, how would you decide the case? Why?

G. If you were of a religion that forbade abortion, do you think that should be a reason for the government to make laws against abortion? Why? Why not?

DESIGN FOR LIFE

Abortion

A Teacher's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub
1977

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TEACHER'S LESSON PLAN

INTRODUCTORY UNIT

Copy and distribute the materials from Introductory Unit in the Student's Lesson Plan. Use the hypothetical cases as a springboard to discussion on the question of abortion. This will allow the students to examine their attitudes concerning this issue, as well as their notions concerning the laws pertaining to this issue.

CASE 1

Sally and Bill Jones, a married couple in their early twenties, discover, much to Bill's elation and Sally's distress, that they are going to be parents. Sally is approximately nine weeks pregnant and in good physical health. She has spent the first years of their marriage working at a job that was the best she could get, but only barely satisfactory in terms of financial and psychological rewards, in order to put Bill through school. He has one more year to go. Their meager savings were in turn to help Sally through school, a goal she has long and eagerly anticipated. The financial burden and time commitment of child raising will eliminate school for Sally. She decides she wants an abortion. Bill, because he has a strong religious belief that life should be preserved at all costs, decides he wants a child. The law in the state where Bill and Sally live requires that written consent of the spouse be given in order for a woman to have an abortion during the first twelve weeks of pregnancy. Bill refuses to give his consent.

QUESTIONS

A. Should Bill be able to prevent the abortion?

B. If you were Bill, what arguments would you make to support your case?

C. What rights does Sally have in this matter? What arguments would you make if you were Sally?

Information For The Teacher

In Planned Parenthood of Missouri v. Danforth, 428 U.S. 52 (1976), the Supreme Court addressed the interests that a father of an unborn child arguably has in an abortion decision. In that case a Missouri statute required that abortions during the first trimester, or first 12 weeks, of pregnancy have prior written consent of the woman's spouse, unless the abortion was necessary to save the life of the mother.

The husband of a pregnant woman can argue that a decision so fundamentally important to the family should be made by both the husband and the wife. Moreover, an abortion could possibly affect a woman's ability to bear children, and thus the husband's opportunity for fatherhood. The Court itself recognized "the deep and proper concern and interest that a devoted and protective husband has in his wife's pregnancy and in the growth and development of the child she is carrying." Supra, at 69. It also noted that the decision of whether or not to have an abortion could have significant and possibly harmful effects, both mental and physical, on a marriage.

Nevertheless, the Court held that the spousal consent provisions of the Missouri statute were inconsistent with the standards of the leading case, Roe v. Wade, 410 U.S. 113 (1973), and were unconsitutional. Roe v. Wade prohibited the State from regulating or proscribing abortions during the first trimester of pregnancy, leaving the decision during that period up to the pregnant woman in consultation with her physician. The State therefore could not delegate authority it did not have to anyone during that same period of time. Moreover, it was unlikely that the State's interest "in protecting the mutuality of decisions vital to the marriage relationship" would be promoted by giving the husband "a veto power exercisable for any reason whatsoever or for no reason at all." Supra, at 71. The Court recognized that it was arguably giving the woman the right to act unilaterally, with the approval of her doctor. Nevertheless, if the husband and wife disagreed on an abortion decision, clearly only one partner's views could prevail. "Since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor". Supra, at 71.

CASE 2

Susie is 16 years old, unmarried and living with her parents. She discovers that she is about eight weeks pregnant. Her parents' dislike for the father of the child is far surpassed

by their belief that abortion is murder. Susie does not want to marry, and does not want to be an unwed mother. She knows it is medically best to have an abortion during the first three months of pregnancy. She wants an abortion and she wants it now. However, the law in her State requires that an unmarried woman under 18 years of age must have the consent of a parent in order to have an abortion during the first 12 weeks of pregnancy. Yet, she knows that neither parent would ever consent.

QUESTIONS

A. What interests do Susie's parents have in the abortion decision? Should they be able to prevent her from having an abortion?

B. Should Susie be able to obtain an abortion without the requirements that her parents consent to the abortion? Why? Why not?

Information For The Teacher

Planned Parenthood also addressed the interests a parent of a pregnant, unmarried minor has in the abortion decision. The Missouri statute provided that in the case of an unmarried minor, the written consent of a parent or person legally acting in place of a parent, such as a guardian, was required unless the abortion was necessary to preserve the mother's life.

The parents of an unmarried pregnant minor can argue that they have an interest in their child's welfare. Since a minor might not be as capable as an adult of acting in her own best interest or of giving informed consent to an abortion, parents should be able to guide a child towards what they believe to be in the child's best interest. Parents can also argue that they have an interest in preserving their role and authority in important decisions affecting family members. See, Planned Parenthood, supra, at 72-75, and Bellotti v. Baird, 428 U.S. 132, 141-144.

Despite such arguments, the Court in Planned Parenthood found the parental consent provisions of the Missouri statute unconstitutional. "Just as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Supra, at 74. The Court looked for significant State interests

in conditioning a minor's abortion on parental consent that were not present in the case of an adult, and found none. The state's interest in strengthening the family unit was not likely to be promoted by providing a parental veto over the decision of the minor daughter and her doctor. Nor was the state's interest in strengthening parental authority promoted by such a veto when parent and child were in such fundamental conflict and the pregnancy itself had injured the family structure. As for a parent's independent interest, the Court said: "Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant." Supra, at 75. The Court emphasized that its holding did not imply that "every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy." Supra, at 75. Rather, the problem with the Missouri statute was that it established a blanket parental consent provision without sufficient justification.

In Bellotti v. Baird, supra, decided the same day as Planned Parenthood, the Supreme Court gave some indication of the type of parental consent provision it might find acceptable, one that made parental consultation and consent preferable but not required. The Court might find such a statute acceptable if a minor capable of giving informed consent to an abortion would be able to obtain, without undue burden, a court order permitting the abortion without parental consultation. The Supreme Court would also consider whether the statute allowed a minor who was not capable of informed consent to obtain such a court order without parental consultation if it was shown that the abortion would be in her own best interests. Such a statute, the Supreme Court said, would be "fundamentally different" from the Mussouri statute creating a parental veto. Supra, at 145.

Planned Parenthood also addressed the issue of an adult woman's prior consent to an abortion. The Court upheld the Missouri provision requiring that, prior to an abortion during the first 12 weeks of pregnancy, a woman must certify in writing that she consents to the operation and that her consent is informed, freely given, and not the result of coercion. Supra, at 65-67.

A Note To The Teacher

In two recent cases dealing with a woman's abortion decision, the Supreme Court held that neither the Social Security Act nor the Equal Protection Clause of the Fourteenth Amendment required a state to provide Medicaid funds for elective abortions, those not certified as medically necessary, even

though funds were provided for childbirth procedures. Medical necessity was defined to include psychological factors. In a third case, the Court also held that a city may prohibit its publicly financed hospitals from providing elective abortions. Congress or a state is still free to fund elective abortions, but it is not required to do so, and a city is similarly still free to open its hospitals to elective abortions, if it wishes to do so.

The Court thought that the decision of whether or not to use public funds for elective abortions should rest with elected officials, who are subject to the democratic process, not with the judiciary. As the dissenting Supreme Court Justices pointed out, there is great concern that these recent decisions, which allow prohibition of public funds for elective abortions where they are nevertheless used to finance childbirth, will ultimately result in many poor women bearing children they might not otherwise have had if abortion had been financially accessible.

As of Spring, 1981, Congress has prohibited the use of Medicaid funds for therapeutic abortions except in three situations. If a physician certifies that a mother's life is in danger, Medicaid funds may be used for an abortion is to prevent severe and long lasting damage to the mother's physical health, Medicaid funds may be utilized.

ADDENDUM:

A 1981 case, H.L. v. Matheson has added yet another footnote to the abortion text. H.L. upheld a Utah law which required physicians to notify the parents of any minor seeking an abortion. Parents are not given the power to veto the girls deision, they are merely entitled to notice before an abortion is eprformed. The court suggested that this law would be unconstittuional if applied to "mature" minor.

LAWYER-IN-THE-CLASSROOM UNIT

Copy and distribute the Day Two materials in the Student's Lesson Plan. Have the students read the case carefully and consider the questions so they can engage in discussion with the lawyer.

CASE

Jane Roe, an unmarried woman 20 years of age, was informed by her doctor that she was approximately 8 weeks pregnant. She decided that she did not want to have a child and sought an abortion. Aware of the risks to her health and life in an illegal abortion, Jane wanted to have the abortion performed by her doctor, who was a licensed physician and surgeon, and in a hospital. However, her doctor refused to perform the operation. The laws in Jane's state provided that an abortion was a criminal offense unless it was performed to save the mother's life and that her doctor would be subject to jail if he disobeyed the law. As her doctor explained, Jane was a perfectly healthy female and her pregnancy presented no threat to her life. In fact, her doctor added, the present state of medical and surgical science was such that an abortion in the early stages of pregnancy, as in Jane's case, presented less of a risk to her physical health than normal childbirth. Still, given the State law, nothing could be done. Because she could not afford the expense of obtaining an abortion in another state, Jane was faced with the burdens of pregnancy, childbirth, raising a child she did not want, and the social stigma arising from being an unwed mother.

QUESTIONS

A. Does a woman have a constitutional right to an abortion If so, is it absolute?

B. Who has an interest in whether an abortion is allowed? The pregnant woman? The State? Anyone else? Which of these interested parties' needs are or should be protected by the law? Why?

C. If you were Jane (or any other pregnant woman) what arguments would you make to support your absolute right to an abortion?

D. What arguments can be made for the State having the right to regulate and forbid abortion?

E. How would you feel if you were Jane? The potential father.

F. If you were the court, how would you decide the case? Why?

G. If you were of a religion that forbade abortion, do you think that should be a reason for the government to make laws against abortion? Why? Why not?

FOLLOW-UP UNIT

Copy and distribute Follow-Unit materials in the Student's Lesson Plan. Have the class read the materials. Conduct an open-ended discussion based on the questions contained in the Student's Plan. Remind students to use the information gained from the lawyer's visit in analyzing the hypothetical issue presented here.

The Introductory Unit and the "Lawyer-in-the-Classroom" Unit examined the rights of parents and husbands in abortion cases. This unit offers the students an opportunity to examine the rights of the government in issues concerned with abortion.

CASE

It is the year 2020. The United States has been successful in its campaign of the past 25 years to attain zero population growth. This policy had been set in the 1990's when it was recognized that the country would be faced with a major crisis if the population continued to increase at the rate it had since the turn of the 20th century.

Envisioning critical food shortages, vast unemployment, inadequate housing as well as intolerable pressures on resources such as water, electricity, oil, etc., the government had passed laws restricting child bearing and requiring that couples wishing to have a child had to obtain a license to comply with the law. If the woman becomes pregnant without the government's approval the government can order her to have an abortion.

Caroline and Frank Robbins have been married 10 years. They have no children. They decide they want a child. They complete the necessary papers and file their application. It is refused. Caroline and Frank decide to have a child secretly and fight the law if they are arrested.

QUESTIONS

A. What are the major issues in this case? Should the government have the right, under any conditions, to make laws restricting people from having children? Why? Why not?

B. If the country faces a crisis such as outlined in this situation, should the government have the right to interfere with the freedom of the individual because of the needs of the whole society? Why? Why not? Do you think your attitude would be the same if you were married and wanted a child? If you had six children and had difficulty supporting them? If you were the President of the United States responsible for the well-being of the entire country?

C. If you were Caroline and Frank would you challenge a law prohibiting you from having children without a license? Why? Why not?

D. What arguments would you use if you were a lawyer defending the Robbins in this case? The prosecuting attorney?

E. How do you think a Supreme Court might decide such a case? What are your reasons?

F. If you were the court, how would you decide the case? Why?

G. If you were of a religion that forbade abortion, do you think that should be a reason for the government to make laws against abortion? Why? Why not?

GLOSSARY

ARBITRARY - Action taken according to a person's own desires; without supervision, general principles or rules to decide by.

DELEGATE - To choose a person to represent you or do a job for you.

FETUS - A developing human from usually three months after conception to birth.

PREGNANT - Containing unborn young within the body.

PREREQUISITE - Something that is necessary to an end or to the carrying out of a function.

SPOUSE - A husband or a wife.

STIGMA - A mark of shame or discredit.

TRIMESTER - A period of three or about three months.

ZERO POPULATION GROWTH - When births and deaths equal each other so that there is no increase in population.

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases—the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.

FEDERAL COURTS	CALIFORNIA COURTS	
UNITED STATES SUPREME COURT	CALIFORNIA SUPREME COURT	
UNITED STATES COURT OF APPEALS (11 Circuits)	STATE COURT OF APPEAL (5 Districts)	APPELLATE COURTS
U.S. DISTRICT COURT (94 Districts)	SUPERIOR COURT (One per County)	MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts) — TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"DESIGN FOR LIFE"

Abortion

A Lawyer Lesson Plan
Prepared by Belinda Smith Walker, 1977

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LAWYER'S LESSON PLAN

AREA OF LAW: Constitutional Law

SPECIFIC TOPIC: Abortion

OBJECTIVE: To expose students to the Supreme Court's decision concerning abortion in Roe v. Wade 410 U.S. 113 (1973), and to briefly discuss issues of spousal and parental consent addressed in the subsequent case of Planned Parenthood of Missouri v. Danforth 318 U.S. 52 (1976).

CASE

The case used in this fact sheet is based on the Supreme Court's landmark decision regarding abortion. The students will be grappling with the same issues faced by the Supreme Court Justices:

Jane Roe, an unmarried woman 20 years of age, was informed by her doctor that she was approximately 8 weeks pregnant. She decided that she did not want to have a child and sought an abortion. Aware of the risks to her health and life in an illegal abortion, Jane wanted to have the abortion performed by her doctor, who was a licensed physician and surgeon, and in a hospital. However, her doctor refused to perform the operation. The laws in Jane's state provided that an abortion was a criminal offense unless it was performed to save the mother's life and that her doctor would be subject to jail if he disobeyed the law. As her doctor explained, Jane was a perfectly healthy female and her pregnancy presented no threat to her life. In fact, her doctor added, the present state of medical and surgical science was such that an abortion in the early stages of pregnancy, as in Jane's case, presented less of a risk to her physical health than normal childbirth. Still, given the state law, nothing could be done. Because she could not afford the expense of obtaining an abortion in another state, Jane was faced with the burdens of pregnancy, childbirth, raising a child she did not want, and the social stigma arising from being an unwed mother.

QUESTIONS AND DISCUSSION

A. What are the major issues raised by the case?

Does a woman have a constitutionally protected right to terminate her pregnancy? If she does, is that right absolute? Can she terminate her pregnancy whenever, in whatever way, and for whatever reasons she chooses? Or may the state regulate and in certain cases prohibit the termination of her pregnancy?

B. Who has an interest in the issues? Which of these interests are or should be protected by law? Why?

The pregnant woman, the state, the unborn child, the father of the unborn child, a pregnant minor's parents all have interests in whether or not a pregnancy is terminated. However, the extent to which these interests have been granted legal protection has varied.

In Roe v. Wade the Court granted legal protection to interests of the pregnant adult woman and the state. The arguments supporting their interests are discussed below, in Question C, which addresses the interests of the parties to Roe v. Wade and in the section titled the "Resolution of the Dispute or Dilemma".

The unborn child arguably has an interest in its own life which, according to some, begins at the time of conception and should be protected from that point on. Only if the mother's life is in danger should the interest of the fetus be secondary and abortion permissible. In addressing this issue, the Court in Roe v. Wade protected the interest of the fetus but only indirectly and only once it is capable of life outside the womb. The Court refused to determine when life begins and refused to grant a fetus full legal status as a person and protection of the Fourteenth Amendment. The Court did, however, recognize that a fetus represented potential life and decided that when a fetus reached viability, the state's interest in protecting fetal life becomes compelling and it may if it chooses prohibit abortion, though not at the expense of the mother's life or health.

The Court defined viability as the point at which the fetus is potentially capable of life outside the womb, even with artificial aid, and noted that viability usually occurred at about 28 weeks or seven months. In

Planned Parenthood of Missouri v. Danforth, the Court stated that it had refused to precisely define the point of viability in Roe because it could vary with individual pregnancies and was a determination for the physician, not the courts or the legislature.

Planned Parenthood also addressed the interests that a father of an unborn child and a pregnant minor's parents arguably have in an abortion decision. In that case a Missouri statute required that abortions during the first trimester, or first 12 weeks, of pregnancy be performed ony if the woman's husband agrees, unless the abortion was necessary to save the life of the mother. In the case of an unmarried minor, the written consent of a parent or guardian ad litem was required unless the abortion was necessary to preserve the mother's life.

The husband of a pregnant woman can argue that a decision so fundamentally important to the family should be made by both the husband and the wife. Moreover, an abortion could possibly affect a woman's ability to bear children, and thus the husband's opportunity for fatherhood. The Court itself recognized "the deep and proper concern and interest that a devoted and protective husband has in his wife's pregnancy and in the growth and development of the child she is carrying." Supra, at 69. It also noted that the decision of whether or not to have an abortion could have significant and possibly harmful effects, both mental and physical, on a marriage.

Nevertheless, the Court held that the spousal consent provisions of the Missouri statute were inconsistent with the standards of Roe v. Wade and were unconstitutional. Roe v. Wade prohibited the State from regulating or proscribing abortions during the first trimester of pregnancy, leaving the decision during that period up to the pregnant woman in consultation with her physician. The State therefore could not delegate authority it did not have to anyone during that same period of time. Moreover, it was unlikely that the state's interest "in protecting the mutuality of decisions vital to the marriage relationship" would be promoted by giving the husband "a veto power exercisable for any reason whatsoever or for no reason at all." Supra, at 71. The Court recognized that it was arguably giving the woman the right to act unilaterally, with the approval of her doctor. Nevertheless, if the husband

and wife disagreed on an abortion decision, clearly only one partner's views could prevail. "Since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor." Supra, at 71.

The parents of an unmarried pregnant minor can argue that they have an interest in their child's welfare. Since a minor might not be as capable as an adult of giving informed consent to an abortion, parents should be able to guide a child towards what they believe to be in the child's best interest. Parents can also argue that they have an interest in preserving their role and authority in important decisions affecting family members. See Planned Parenthood, supra, at 72-75, and Bellotti v. Baird, 428 U.S. 132, 141-144.

Despite such arguments, the Court in Planned Parenthood found the parental consent provisions of the Missouri statute unconstitutional. "Just as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Supra, at 74. The Court looked for significant State interests in conditioning a minor's abortion on parental consent that were not present in the case of an adult, and found none. The state's interest in strengthening the family unit was not likely to be promoted by providing a parental veto over the decision of the minor daughter and her doctor. Nor was the state's interest in strengthening parental authority promoted by such a veto when parent and child were in fundamental conflict and the pregnancy itself had injured the family structure. As for a parent's independent interest, the Court said: "Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant." Supra, at 75. The Court emphasized that its holding did not imply that "every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy." Supra, at 75. Rather, the problem with the Missouri statute was that it established a blanket parental consent provision without sufficient justification.

In Bellotti v. Baird, supra, decided the same day as Planned Parenthood, the Court vacated and remanded a District Court decision that had declared a Massachusetts parental consent provision unconstitutional in order to allow the State Supreme Court to give it a definitive interpretation. The provision was capable of a construction that could avoid or substantially modify the federal constitutional challenge to it, and in describing that interpretation the Supreme Court gave some indication of the type of parental consent provision it might find acceptable. The Massachusetts statute could be construed to make parental consultation and consent preferable but not required. Under that interpretation a minor capable of giving informed consent to an abortion could obtain, without undue burden, a court order permitting the abortion without parental consultation. And a minor who was not capable of informed consent could also obtain such a court order without parental consultation if it was shown that the abortion would be in her own best interests. If the Massachusetts statute were construed in that manner, the Supreme Court said, it would be "fundamentally different: from the Missouri statute creating a parental veto." Supra, at 145.

Planned Parenthood also addressed the issue of an adult woman's prior consent to an abortion. The Court upheld the Missouri provision requiring that, prior to an abortion during the first 12 weeks of pregnancy, a woman must certify in writing that she consents to the operation and that her consent is informed, freely given, and not the result of coercion. Supra, at 65-67.

C. What are the arguments supporting the interests of the parties involved in the case, the adult woman and the state?

1. The argument that a woman has an absolute right to an abortion:

a. A woman's right to an abortion is part of a right of personal privacy preserved by the Constitution. While the Constitution does not specifically mention a right of privacy, it is implied in several of its amendments, such as the Fourteenth Amendment's guarantee that a state may not "...deprive any person of...liberty...without due process of law". This concept is one of personal liberty, protected from interference by the state, and should encompass a woman's decision whether or not to have a child, because such a decision is fundamental to her personal privacy and liberty.

b. Serious and substantial harm is inflicted upon a woman when she is denied the right to decide whether or not to have a child:

(1) Pregnancy might harm her physical and/or mental health;

(2) The care and raising of a child or additional children might result in a distressing future for a woman, placing a burden on her physical and mental health, and her financial resources;

(3) In the situation of an unwed mother, additional problems and social stigma may be involved.

c. The birth of unwanted children can also create difficulties for the family unable, psychologically or financially, to care for it; for the child who may suffer psychological detriment; and for the community itself which may incur the burden of its care.

d. Most state laws making abortion a crime were first enacted when abortion was a medically hazardous procedure, and arguably the states' concern was to protect the pregnant woman. However, the advances in modern medical and surgical practices have been such that abortion in early pregnancy (prior to the end of the first trimester) is much safer. Mortality rates for women having early abortions are as low or lower than those for women in normal childbirth. Therefore, the state's interest in protecting a woman from a hazardous medical procedure has largely disappeared.

2. The argument that the state has a legitimate interest in regulating and even prohibiting abortion in certain cases:

a. The state has a legitimate interest in protecting health and maintaining medical standards. As in the case of any other medical procedure, the state has an interest in seeing that abortions are performed with maximum safety for the patient.

b. The state has an interest, and arguably a duty, in the protection of prenatal life. A new human life is present from the time of conception, and only when a choice has to be made between the life of the pregnant woman and the life of the fetus should the interests of the mother be given prime consideration.

c. Even if one does not accept the argument that life begins at conception or any other point prior to birth, the embryo or fetus has at least potential life and the state has an interest and obligation in its protection.

3. Which arguments do the students find most persuasive and why? For a summary of those arguments the Court found most persuasive, see the section "Decision in the Case" below.

a. Ask the students how they would feel if the situation involved them, or someone they like or dislike.

b. What effects, if any, would and/or should the following factors have in resolving the dispute or the problem:

(1) Prejudice;

(2) Sympathy;

(3) The relative needs of the parties;

The needs of the pregnant woman and the state appear to have been factors in the Court's decision, although they were discussed in terms of interests. Looking beyond that term, it would seem that the Court was recognizing that a woman's needs include her own physical and mental health, the absence of social stigma, and the liberty to determine whether the birth of a child will be detrimental to her overall interests. The needs of the state, by the same analysis, were also recognized and include the need to preserve the life and health of its citizens and the maintenance of medical standards. The Court

decided that the mother's needs were to be protected until the different state needs became compelling. In the early stages of pregnancy, abortion is a relatively safe medical procedure and state regulation is not needed to protect the mother's health; moreover, the fetus has not reached a stage of development that warrants state action to protect life. When the medical hazards of abortion have increased at the second trimester, the state may regulate the abortion procedure to protect the mother's health. But only when the fetus has reached the point of viability may the state act to the exclusion of the mother's needs and prohibit abortion, and even then the state must allow abortion if it is necessary for the mother's life or health.

(4) Society's needs;

Society's needs were indeed a factor, and were represented largely by those of the state. However, additional societal needs were recognized and supported abortion in situations other than the preservation of the mother's life. For example, society needs to have families that can psychologically and financially care for their members and it needs to have psychologically healthy children who grow into healthy adults. Additionally unwanted children can adversely affect those needs.

(c). The majority of states have had restrictions on abortion for at least a century. These laws reflect the majority of opinion of the people in the states. Should the Supreme Court, a judicial body, decide the issues at all, or should it be left to the legislature in each state?

(d) Ask the students how they would resolve the dispute or the problem and why.

RESOLUTION OF THE DISPUTE OR DILEMMA

The Supreme Court decided the case as follows:

The Court held that the right of privacy, rooted in the Fourteenth Amendment, includes a woman's decision whether or not to have a child. However, while the right of a woman to decide whether to have an abortion is a fundamental right, it is not absolute and may be limited by interests of the state that are compelling. The state's interests in protecting health, maintaining medical standards, and protecting potential life are important, and at various points during pregnancy become compelling enough to constitutionally permit regulation of the abortion decision.

In deciding when the state's interests become compelling, the Court first addressed the issue of whether a fetus should be legally considered a person in the full sense. It concluded that since the use of the word "person" in the Constitution nearly always referred to a living being after birth, the fetus was not a person within the meaning and protection, of the Fourteenth Amendment. The Court also declined to decide the question of when life begins, stating that "When those trained in . . . medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary is not in a position to speculate as to the answer." Supra, at 159. Moreover, the law has granted rights to the unborn only in narrowly defined situations and when the rights depend on live birth. Therefore, the Court concluded, " . . . the unborn have never been recognized in the law as persons in the whole sense." Supra, at 162.

Nevertheless, the state's legitimate interest in protecting the pregnant woman's health and its separate but also legitimate interest in protecting the potentiality of human life exist and increase as pregnancy progresses. Since the present state of medical knowledge makes abortion during approximately the first trimester of pregnancy a relatively safe surgical procedure, the decision whether to terminate a pregnancy rests with the woman and her doctor, free from state regulation or interference. From approximately the end of the first trimester on, the state's interest in protecting health becomes compelling and it may regulate the abortion procedure in a manner reasonably related to maternal health, such as requirements concerning the qualifications and licensing of the person performing the abortion and the facility where the operation will occur. When a fetus becomes viable, the state's interest

in protecting potential life becomes compelling and after viability, if it so chooses, the state may regulate and even place criminal penalties on abortion except where abortion is necessary for the preservation of the mother's life or health. Because the relevant statutes in Jane Roe's state did not comply with these standards distinguishing early and late pregnancy, they violated the Due Process Clause of the Fourteenth Amendment.

Emphasize to the students that the Supreme Court decision does not require a pregnant woman to have an abortion. Rather, it merely allows women who want one to have one. The case can serve as an example as to how the law can operate in a democratic society, providing the freedom for persons with deeply conflicting beliefs to life according to their individual opinions in one society.

ADDENDUM

Since Roe v. Wade, the Supreme Court has handed down several opinions dealing with abortion. Planned Parenthood of Missouri v. Danforth, portions of which are discussed above, was one such case. The holdings in several others are summarized below.

Doe v. Bolton, 410 U.S. 179 (1973), the companion case to Roe v. Wade, has assumed increasing importance as a result of several of the Court's recent decisions. In Doe v. Bolton, the Court examined several portions of a Georgia Statute regulating abortions. It upheld a provision that made it a crime for a physician to perform an abortion unless the decision to do so was "based upon his best clinical judgment that an abortion is necessary". Supra, at 191. Essential to the Court's conclusion was the fact that the physician's judgment could be made "...in the light of all factors--physical, emotional, psychological, familial, and the woman's age--relevant to the well-being of the patient." Supra, at 192.

In Beal v. Doe, 97 S.Ct. 2366 (1977), the Court held that the Social Security Act does not require a state to fund elective or nontherepeutic abortions in order to participate in the Medicaid program. In the companion case of Maher v. Roe, 97 S.Ct. 2474 (1977), the Court held that the Equal Protection Clause does not require a state participating in Medicaid to fund elective abortions even though it pays for childbirth. In Beal, decided solely on statutory grounds, state funds were also used for childbirth. In both cases the state regulations affected first trimester pregnancies and limited

Financial assistance to abortions certified to be medically necessary, a term defined to include psychological factors. In a third case, Poelker v. Doe , 97 S. CT. 2391 (1977), the Court upheld the policy of St. Louis to provide publicly financed hospital services for childbirth but not for elective abortions. In short, Congress or a state is still free to fund elective abortions, but it is not required to do so, and a city is similary free to open its hospitals to elective abortions if it wishes.

The court thought the decision of whether or not to use public funds for elective abortions should rest with elected officials, who are subject to the democratic process, not with the judiciary. As the dissenting supreme Supreme Court Justices pointed out, there is great concern that these recent decisions, which allow prohibition of public funds for elective abortions where they are nevertheless used to finance childbirth, will ultimately result in many poor women bearing children they might not otherwise have had if abortion had been financially accessible.

Special abortion laws for minors were given partial approval in H.L. v. Matheson, 101 s.ct. 1164 (1981). H.L. upheld a Utah law whcih required physicians to notify the parents of a minor before performing an abortion for her. The statute provided for notice only; it did not give parents a veto over their daughter's decision. In upholding the law, the court hinted that application of the law to a "mature" minor would be unconstitutional. Since H.L. was demonstrably immature the court set no precedent on the matter of maturity.

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